

**UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TENNESSEE**

<p>FUSION ELITE ALL STARS, SPIRIT FACTOR LLC d/b/a FUEL ATHLETICS, and STARS AND STRIPES GYMNASTICS ACADEMY INC. d/b/a STARS AND STRIPES KIDS ACTIVITY CENTER, Individually and on Behalf of All Others Similarly Situated,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>Varsity Brands, LLC; Varsity Spirit, LLC; Varsity Spirit Fashion & Supplies, LLC; and U.S. All Star Federation, Inc.,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No. 2:20-cv-02600-SHL-cgc</p> <p>Jury Trial Demanded</p>
<p>KATHRYN ANNE RADEK, LAUREN HAYES, and JANINE CHERASARO on behalf of themselves and all others similarly situated,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>Varsity Brands, LLC; Varsity Spirit, LLC; Varsity Spirit Fashion & Supplies, LLC; and U.S. All Star Federation, Inc.,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No. 2:20-cv-02649-SHL-cgc</p> <p>Jury Trial Demanded</p>

JOINT MOTION TO CONSOLIDATE UNDER FED. R. CIV. P. 42
WITH INCORPORATED MEMORANDUM

Pursuant to Federal Rule of Civil Procedure 42, Plaintiffs Fusion Elite All Stars, Spirit Factor LLC d/b/a Fuel Athletics, Stars and Stripes Gymnastics Academy Inc. d/b/a Stars and Stripes Kids Activity Center, Kathryn Anne Radek, Lauren Hayes, and Janine Cherasaro (“Moving Plaintiffs”) jointly move to consolidate the above-captioned actions. Moving Plaintiffs have conferred with Defendants, who do not oppose this Motion.¹

I. BACKGROUND

There are two cases currently pending before the Court alleging substantially similar facts and claims against the same defendants: *Fusion Elite All Stars, et al v. Varsity Brands, LLC, et al.*, 2:20-cv-02600-SHL, Dkt. No. 1, (W.D. Tenn. Aug. 13, 2020) (“*Fusion Elite Action*”) and *Kathryn Radek, et al. v. Varsity Brands, LLC, et al.*, 2:20-cv-02649-SHL, Dkt. No. 1, (W.D. Tenn. Aug. 25, 2020) (“*Radek Action*”).² Both cases are brought on behalf of direct purchasers from the Varsity Defendants and are based on Defendants’ alleged anticompetitive conduct in the markets for All Star Competitions and All Star Apparel, and bring claims under federal antitrust laws. Plaintiffs’ counsel in both actions have conferred and jointly move to consolidate the two actions.

On August 25, 2020, the Court issued a Notice of Setting a scheduling conference for September 30, 2020 in the *Fusion Elite Action*. The Notice of Setting also included several interim deadlines. The parties in both the *Fusion Elite Action* and the *Radek Action* intend to comply with the deadlines set out in the Court’s Notice of Setting, as if those dates apply to the requested consolidated case.³

¹ See certification, *infra*.

² Varsity Brands, LLC, Varsity Spirit, LLC, Varsity Spirit Fashion & Supplies, LLC (“Varsity Defendants”), and U.S. All Star Federation, Inc. (“USASF”) (collectively, the “Defendants”).

³ Prior to the issuance of the Notice of Setting, on August 19, 2020, the parties to the *Fusion Elite Action* filed a Joint Motion for Entry of Case Management Order No. 1 (Dkt. No. 14). Among other things, the proposed order requested the appointment of interim co-lead class counsel for the *Fusion Elite Action*. In the event that the Court approves consolidation, Counsel in the two cases have conferred and reached an agreement to move for the appointment of Berger Montague PC, Cuneo Gilbert & LaDuca, LLP, and Labaton Sucharow LLP as Co-Lead Interim Class Counsel, and Branstetter, Stranch, & Jennings, PLLC as interim Liaison Counsel,

II. CONSOLIDATION IS APPROPRIATE

Federal Rule of Civil Procedure 42(a) provides that the Court may consolidate actions that “involve a common question of law or fact.” Fed. R. Civ. P. 42(a). In the Sixth Circuit, courts consider “[w]hether the specific risks of prejudice and possible confusion [are] overborne by the risk of inconsistent adjudications of common factual and legal issues, the burden on parties, witnesses and available judicial resources posed by multiple lawsuits, the length of time required to conclude multiple suits as against a single one, and the relative expense to all concerned of the single-trial, multiple-trial alternatives.” *Smith v. Nellis*, No. 1:20-CV-2002, 2020 WL 1815942, at *1 (W.D. Tenn. Apr. 9, 2020) (quoting *Cantrell v. GAF Corp.*, 999 F.2d 1007, 1011 (6th Cir. 1993)).

The above-captioned actions present nearly identical questions of law and fact. Each alleges the same underlying conduct: that Defendants, through a variety of exclusionary conduct, maintained or enhanced monopoly power in the markets for All Star competitions and All Star apparel.⁴ Each is brought on behalf of the same proposed classes of All Star gyms and persons who paid expenses associated with All Star Competitions and/or All Star Apparel directly to the Varsity Defendants. And each asserts claims under the Sherman Act Section 2 for monopolization and conspiracy to monopolize.⁵ Consolidating the actions will avoid inefficiency, delay, confusion, and prejudice by having all plaintiffs litigate their overlapping claims on behalf of the same proposed class of persons and entities in a single action instead of

for the proposed Direct Purchaser Plaintiff class in the proposed consolidated action, subject to the Court’s approval. To that end, counsel in the *Fusion Elite Action* will file a notice on that docket indicating that they support the new proposed leadership structure, and Labaton Sucharow will file papers, both a Notice and a Motion, on the *Radek Action* docket in support of the new proposed interim class counsel structure under Federal Rule of Civil Procedure 23(g).

⁴ For definitions of All Star competitions and All Star apparel see *Kathryn Radek, et al. v. Varsity Brands, LLC, et al.*, 2:20-cv-02649-SHL, Dkt. No. 1 (W.D. Tenn. Aug. 25, 2020) (¶¶ 88-95); *Fusion Elite All Stars, et al. v. Varsity Brands, LLC, et al.*, 2:20-cv-02600-SHL, Dkt. No. 1, (W.D. Tenn. Aug. 13, 2020) (¶¶ 82-92, 97-101).

⁵ Plaintiffs in the *Radek Action* also assert a claim under Sherman Act Section 1 for conspiracy to monopolize.

multiple, parallel actions. *See Atkinson v. Morgan Asset Mgmt., Inc.*, 2008 WL 11319683, at *6 (W.D. Tenn. Sept. 23, 2008) (granting consolidation where “[t]he proposed consolidation would save judicial resources and prevent unnecessary cost and delay[;] [n]o party has objected to consolidation, and the Court has no reason to conclude that any party would be prejudiced if the Court grants the motions for consolidation”). Consolidating the actions will also avoid the risk of inconsistent judgments and save the parties the expense of duplicative recovery and trial practice. *See McNeil v. Memphis Police Ass’n, Inc.*, No. 07–2166, 2008 WL 2402530, at *2 (W.D. Tenn. June 11, 2008) (“The cases involve essentially identical questions of law and fact, the same defendants, and will require much of the same evidence. Additionally, the cases are at the same early stage of litigation. Consolidating these cases will avoid duplicative discovery and promote judicial economy.”).

Moving Plaintiffs therefore request that the Court order that the above-captioned actions shall be consolidated for all purposes up and through trial pursuant to Federal Rule of Civil Procedure 42(a).

Dated: September 8, 2020

Respectfully submitted,

By: /s/ J Gerard Stranch, IV

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CERTIFICATE OF CONSULTATION

Consistent with Local Rule 7.2(a)(1)(B), I hereby certify that on September 2, 2020, I, Karin E. Garvey, along with Eric Cramer, Victoria Sims, and Ben Gastel began consultation with Steven Kaiser and Nicole Berkowitz, counsel for the Defendants and such counsel indicated that they did not oppose the relief granted by this motion. Such consultation was by phone on September 2, 2020 and by email thereafter.

/s/ Karin E. Garvey

CERTIFICATE OF SERVICE

The undersigned certifies the foregoing document was filed with the Court's Case Management/Electronic Case Filing System, this 8th day of September, 2020, and served upon the following counsel:

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